1989

Clyde Wade v. Linda Jobe : Brief of Appellee

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

CLYDE WADE,	*	
Plaintiff/Respondent,	*	
v.	*	
LINDA JOBE,	*	Case No. 890443
Defendant/Appellant.	*	Priority 14 b

BRIEF OF RESPONDENT

An appeal from the final judgment of the Second District Court, Honorable Ronald O. Hyde, presiding.

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JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a judgment of the Second District Court in an action between a landlord and a tenant. Jurisdiction is proper pursuant to Utah Code Annotated # 78-2-2(3) (j).

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

Respondent accepts appellant's Statement of Issues.

STATEMENT OF THE CASE

Respondent accepts appellant's Statement of the Case.

SUMMARY OF ARGUMENT

I. THE CONSUMER SALES PRACTICES ACT DOES NOT APPLY TO RESIDENTIAL RENTAL TRANSACTIONS

In the 1990 session the legislature passed Section 57-22-1 et. seq., Utah's warranty of habitability law. The law sets out the basic protections and duties for the rental of residential property for both landlords and tenants. This specific intent law removes any doubt that the legislature never intended the consumer sales practices act to apply to residential rental transactions.

II. JOBE IS NOT ENTITLED TO DAMAGES DUE TO HER OWN CONDUCT.

The trial court found after hearing all the evidence that even if the Consumer Sales Practices Act were applicable, the evidence would not warrant a finding of any deceptive act or practice on the part of the landlord as contemplated by the Consumer Sales Practices Act. Jobe did not make rental payments, and voluntarily remained on the property even though under a month-to-month tenancy she could have left at any time with 15 days notice. The trial court had ample support for its findings.

III. THE LEGISLATURE HAS CREATED A WARRANTY OF HABITABILITY

Appellant advocates a warranty of habitability should be created. The legislature taking the recommendation of the Utah Court of Appeals in P.H. Investment-v. Oliver, 778 P.2d 11, (Utah App. 1989) cert. granted, (Utah Sup. Ct. Oct. 4, 1989 (No. 893057) citations omitted, passed the Utah Fit Premises Act, now Section 57-22-1 creating such a warranty of habitability in Utah. Said law was not made retroactive and Jobe would not have been in compliance with the law to avail herself of its remedies.

ARGUMENT

POINT I.

THE UTAH CONSUMER SALES PRACTICES ACT DOES NOT APPLY TO RESIDENTIAL RENTAL TRANSACTIONS

Appellant advocates that consumer protection laws should

apply in a landlord tenant context. At the time appellant's brief was written, Utah's Consumer Sales Practices Act made no specific mention that it applied to landlord-tenant transactions.

Also, the landlord-tenant sections of the code made no mention of any warranty of habitability language or duties. Under that status of the law, respondent would have requested this court to take the position taken by the Washington Supreme Court in State v. Schwab, 693 P.2d 108 (Wash. 1985) wherein that court articulated that such problems in residential rental transactions were to be handled under the State's Landlord-Tenant Act and not under consumer protection law.

Such argument has been rendered unnecessary by the enactment of Sections 57-22-1 et. seq. U.C.A. Here is a specific act setting out the duties of landlords and tenants with regards to the maintenance of residential rental property. The sections include all residential rental transactions from the date the law became effective (March 14, 1990) and makes no reference that any consumer protection laws are applicable in these transactions and is not made retroactive.

The trial court's determination based upon the state of the laws at time of trial was correct. The trial court, where the legislature was silent, did not attempt to supply legislative intent to the Consumer Sales Practices Act where none was spoken. The trial court wisely did not attempt to

create law and allowed legislative action to decide the issue. There is no reason for this court to act where legislative enactment has cleared up any confusion.

POINT II.

JOBE IS NOT ENTITLED TO DAMAGES DUE TO HER OWN CONDUCT.

Appellant's burden is to show that evidence is legally insufficient to support the findings, even viewing them in the light most favorable to the court below. Reid v. Mutual of Omaha Ins. Co., 776 P. 2d, 896, 899 (Utah 1989).

Here, the tenant paid only partial rent for the time she occupied the premises (Findings of Fact 7 and 8) and continued to remain on the property while alleged problems existed.

The tenant had the right at any time to vacate the premises upon 15 days notice, it being an oral month-to-month agreements (Findings of Fact 1). The record shows the landlord made numerous responses to tenant's complaints (Tr. 34, 53). The record also shows that tenant, rather than move, deliberately withheld rent from landlord in November 1988 (Tr. 24, 25).

The trial court had ample support to conclude tenant had received the benefit of landlord's housing for five months and had paid only a partial sum towards that obligation. The findings do not even approach being "clearly erroneous" (Rule 52 (a) Utah Rules of Civil Procedure). These findings can be

overturned as lacking adequate evidentiary support only if that finding is against the great weight of the evidence. Reid 776 P.2d at 899-90. Tenant has not made such a demonstration here, the trial court simply asking her to pay for the time she received the benefit of housing from landlord.

POINT III.

THE LEGISLATURE HAS CREATED A WARRANTY OF HABITABILITY.

Appellant presses this court to recognize a warranty of habitability in Utah. After years of rejecting habitability bills, the 1990 legislature passed Sections 57-22-1 et. seq. creating a warranty of habitability.

In P.H. Investment v. Oliver filed July 14, 1989, Judge Dee writing for the majority, indicated that the court deferred to the legislature in establishing a warranty of habitability. However, an indication was given in both the majority and dissenting opinions that if further legislative inaction continued the court might step in to meet important public policy needs.

The legislature reacted to the courts concerns in the 1990 session and the bill on warranty of habitability passed and became law on March 14, 1990. However, the trial court correctly relying upon the Oliver case had a duty to find that no warranty of habitability existed in this case. Clearly where the trial court follows to the letter the case law

created by an appellate court that finding is amply justified.

CONCLUSION

Legislative action subsequent to the conclusion of this case in the lower court has given specific intent language to our laws in the areas of appellant's concerns. However, at time of trial, the lower court followed existing case law and its findings are amply supported by the evidence and the respective conduct of the parties.

DATED this 21st day of March, 1990.

JAMES H. DEANS
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Respondent to: Judith Mayorga, 385 - 24th Street, Suite 522, Ogden, Utah 84401 and Bruce Plenk, 124 South 400 East, Suite 400, Salt Lake City, Utah 84111, this 22nd day of March, 1990, postage prepaid.

JAMES H. DEANS

UTAH FIT PREMISES ACT

1990

GENERAL SESSION

Enrolled Copy

H. B. No. 43 By H. Craig Moody

AN ACT RELATING TO REAL ESTATE; REQUIRING OWNERS AND RENTERS TO MAINTAIN PREMISES IN FIT CONDITION; DEFINING THE DUTIES OF OWNERS AND RENTERS; CLARIFYING OBLIGATIONS FOR CERTAIN UTILITY CHARGES; AND CREATING REMEDIES FOR OWNERS AND RENTERS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

17-6-3.6, AS LAST AMENDED BY CHAPTER 1, LAWS OF UTAH 1982, SECOND SPECIAL SESSION

ENACTS:

57-22-1, UTAH CODE ANNOTATED 1953

57-22-2, UTAH CODE ANNOTATED 1953

57-22-3, UTAH CODE ANNOTATED 1953

57-22-4, UTAH CODE ANNOTATED 1953

57-22-5, UTAH CODE ANNOTATED 1953

57-22-6, UTAH CODE ANNOTATED 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 17-6-3.6, Utah Code Annotated 1953, as last amended by Chapter 1, Laws of Utah 1982, Second Special Session, is amended to read:

17-6-3.6. **Certification of bond issue to county commissioners -- Tax levy -- Payment of revenue bonds -- Election on general obligation**

is paid at the same time. The board may agree to suspend water or sewer service, or both, to any customer who shall become delinquent in the payment of any charges due the district. Whether or not a district operates a waterworks system, any unpaid and delinquent charges for sewer or water service shall be certified by the clerk of the district to the treasurer or assessor of the county in which the delinquent premises are located. The amount of the delinquent charges, together with interest and penalties, shall immediately upon the certification become a lien on the delinquent premises on a parity with and collectible at the same time and in the same manner as general county taxes are a lien on the premises and are collectible. All methods of enforcement available for the collection of general county taxes, including sale of the delinquent premises, shall be available and shall be used in the collection of the delinquent sewer charges. However, when the customer is a renter of residential property covered by Chapter 22, Title 57, any unpaid and delinquent charges are a personal liability for the customer and may not be placed as lien on the property.

Section 2. Section 57-22-1, Utah Code Annotated 1953, is enacted to read:

57-22-1. **Short title.**

This chapter is known as the "Utah Fit Premises Act."

Section 3. Section 57-22-2, Utah Code Annotated 1953, is enacted to read:

57-22-2. **Definitions.**

As used in this chapter:

(1) "Owner" means the owner, lessor, or sublessor of a residential rental unit. A managing agent, leasing agent, or resident manager is considered an owner for purposes of notice and other communication required or allowed under this chapter unless the agent or manager specifies otherwise in writing in the rental agreement.

(2) "Rental agreement" means any agreement, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions regarding the use and occupancy of a residential rental unit.

(3) "Renter" means any person entitled under a rental agreement to occupy a residential rental unit to the exclusion of others.

(4) "Residential rental unit" means a renter's principal place of residence and includes the appurtenances, grounds, and facilities held out for the use of the residential renter generally, and any other area or facility provided to the renter in the rental agreement. It does not include facilities contained in a boarding or rooming house or similar facility, mobile home lot, or recreational property rented on an occasional basis.

Section 4. Section 57-22-3, Utah Code Annotated 1953, is enacted to read:

57-22-3. **Duties of owners and renters -- Generally.**

(1) Each owner and his agent renting or leasing a residential rental unit shall maintain that unit in a condition fit for human habitation and in accordance with local ordinances and the rules of the board of health having jurisdiction in the area in which the residential rental unit is

located. Each residential rental unit shall have electrical systems, heating, plumbing, and hot and cold water.

(2) Each renter shall cooperate in maintaining his residential rental unit in accordance with this chapter.

(3) This chapter does not apply to breakage, malfunctions, or other conditions which do not materially affect the physical health or safety of the ordinary renter.

(4) Any duty in this act may be allocated to a different party by explicit written agreement signed by the parties.

Section 5. Section 57-22-4, Utah Code Annotated 1953, is enacted to read:

57-22-4. **Owner's duties -- Maintenance of common areas, building, and utilities -- Duty to correct -- No duty to correct condition caused by renter -- Owner may refuse to correct.**

(1) To protect the physical health and safety of the ordinary renter, each owner shall:

(a) not rent the premises unless they are safe, sanitary, and fit for human occupancy;

(b) maintain common areas of the residential rental unit in a sanitary and safe condition;

(c) maintain electrical systems, plumbing, heating, and hot and cold water;

(d) maintain other appliances and facilities as specifically contracted in the lease agreement; and

(e) for buildings containing more than two residential rental units, provide and maintain appropriate receptacles for garbage and other waste and arrange for its removal, except to the extent that renters and owners otherwise agree.

(2) In the event the renter believes the residential rental unit does not comply with the standards for health and safety required under this chapter, the renter shall give written notice of the noncompliance to the owner. Within a reasonable time after receipt of this notice, the owner shall commence action to correct the condition of the unit. The notice required by this subsection shall be served pursuant to Section 78-36-6.

(3) The owner need not correct or remedy any condition caused by the renter, the renter's family, or the renter's guests or invitees by inappropriate use or misuse of the property during the rental term or any extension of it.

(4) The owner may refuse to correct the condition of the residential rental unit and terminate the rental agreement if the unit is unfit for occupancy. If the owner refuses to correct the condition and intends to terminate the rental agreement, he shall notify the renter in writing within a reasonable time after receipt of the notice of noncompliance. If the rental agreement is terminated, the rent paid shall be prorated to the date the agreement is terminated, and any balance shall be refunded to the renter along with any deposit due.

(5) The owner is not liable under this chapter for claims for mental suffering or anguish.

Section 6. Section 57-22-5, Utah Code Annotated 1953, is enacted to read:

57-22-5. **Renter's duties -- Cleanliness and sanitation -- Compliance with written agreement -- Destruction of property, interference with peaceful enjoyment prohibited.**

(1) Each renter shall:

(a) comply with the rules of the board of health having jurisdiction in the area in which the residential rental unit is located which materially affect physical health and safety;

(b) maintain the premises occupied in a clean and safe condition and shall not unreasonably burden any common area;

(c) dispose of all garbage and other waste in a clean and safe manner;

(d) maintain all plumbing fixtures in as sanitary a condition as the fixtures permit;

(e) use all electrical, plumbing, sanitary, heating, and other facilities and appliances in a reasonable manner;

(f) occupy the residential rental unit in the manner for which it was designed, but the renter may not increase the number of occupants above that specified in the rental agreement without written permission of the owner;

(g) be current on all payments required by the rental agreement; and

(h) comply with all appropriate requirements of the rental agreement between the owner and the renter.

(2) No renter may:

(a) intentionally or negligently destroy, deface, damage, impair, or remove any part of the residential rental unit or knowingly permit any person to do so;

(b) interfere with the peaceful enjoyment of the residential rental unit of another renter; or

(c) unreasonably deny access to, refuse entry to, or withhold consent to enter the residential rental unit to the owner, agent, or manager for the purpose of making repairs to the unit.

Section 7. Section 57-22-6, Utah Code Annotated 1953, is enacted to read:

57-22-6. **Renter's remedies -- Compliance required -- Notice to owner or agent-renter entitled to judicial remedy -- Attorneys' fees.**

(1) A renter is not entitled to the remedies set forth in this section unless the renter is in compliance with all provisions of Section 57-22-5.

(2) If a reasonable time has elapsed after the renter has served written notice on the owner under Section 57-22-4 and the condition described in the notice has not been corrected, the renter may cause a "notice to repair or correct condition" to be prepared and served on the owner pursuant to Section 78-36-6. This notice shall:

(a) recite the previous notice served under Subsection 57-22-4 (2);

(b) recite the number of days that have elapsed since the notice was served and state that under the circumstances such a period of time constitutes the reasonable time allowed under Section 57-22-4;

(c) state the conditions included in the previous notice which have not been corrected;

(d) make demand that the uncorrected conditions be corrected; and

(e) state that in the event of failure of the owner to commence reasonable corrective action within three days the renter will seek redress in the courts.

(3) (a) If the owner has not corrected or used due diligence to correct the conditions following the notice under this section, the renter is entitled to bring an action in circuit or district court.

(b) The court shall endorse on the summons the number of days within which the owner is required to appear and defend the action, which shall not be less than three nor more than 20 days from the date of service.

(c) Upon a showing of an unjustified refusal to correct or the failure to use due diligence to correct a condition described in this chapter, the renter is entitled to damages and injunctive relief as determined by the court.

(d) The damages available to the renter include rent improperly retained or collected. Injunctive relief includes a declaration of the court terminating the rental agreement and an order for the repayment of any deposit and rent due.

(e) The prevailing party shall be awarded attorneys' fees commensurate with the cost of the action brought.

(4) (a) If the renter is notified that the owner intends to terminate the rental agreement pursuant to Section 57-22-4, the renter is

entitled to receive the balance of the rent due and the deposit on the rental unit within ten days of the date the agreement is terminated.

(b) No renter may be required to move sooner than ten days after the date of notice.